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10/776,607	02/12/2004	Richard R. Cisneros	23703.01	3948

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EXAMINER

COLE, LAURA C

ART UNIT

1744

PAPER NUMBER

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,607

Applicant(s)

CISNEROS, RICHARD R.

Examiner

Laura C. Cole

Art Unit

1744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>02122004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: "42" (Figure 4). Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

2. Claim 16 is objected to because of the following informalities:

Claim 16 Line 2 has a typographical error, the symbol "]" appears to have been included inadvertently.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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3. Claims 1-14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 discloses that the absorbent pad is "pre-moistened with sanitizing fluid" however Claim 6 requires that the fluid is "fast drying". It is unclear if the pad is "pre-moistened" during the manufacturing process and that the sanitizing fluid is in a dry state on the absorbent pad. Also, it is unclear as to what is meant by "fast drying."

Claim 4 Line 3, it is unclear as to what is meant by "sponge-like."

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-2, 4, and 8-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Ashe et al., US 2004/0156668.

Ashe et al. disclose the claimed invention including a rigid body having a handle portion (10) and a lower edge (18) and an absorbent pad disposed at the lower edge of the rigid body (12), the pad being pre-moistened with sanitizing fluid (6; Paragraphs 17-18, particularly that the fluid can be for "wound treatment"). The body is flat (see Figure

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2) and rigid (Paragraph 18). The pad can be a sponge-like material, such as foam (Paragraph 18). The pad is fixed to the rigid body by an adhesive or may be mechanically fixed (Paragraph 18). There is a moisture-impregnable wrapper extending around and encapsulating at least the absorbent pad (4; Paragraph 17), is sealed to the rigid body allowing the handle portion to extend out of the wrapper (see Figures 1-2; Paragraph 19), the moisture-impregnable wrapper is sealed to the rigid body using an adhesive or heat-sealing the wrapper to the body (Paragraph 19; it is noted that "heat sealing" is a process, and that "[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777

F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985), MPEP 2113).

5. Claims 1, 4-6, 10, 14, and 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Owens et al., USPN 5,159,735.

Owens et al. disclose the claimed invention including a rigid body (1) having a handle portion (2) and a lower edge (lower portion of "1"), and an absorbent pad (3) disposed at the lower edge of the rigid body (see Figures 1-2), the pad being pre-moistened with sanitizing fluid (Column 3 Lines 34-39). The absorbent pad is a fabric material (Column 2 Lines 62-63), the sanitizing fluid is anti-bacterial, anti-viral, and fast-drying (Column 2 Lines 63-66). There is a moisture-impregnable wrapper extending

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around and encapsulating at least the absorbent pad wherein the wrapper completely encapsulates the swab (Abstract). The body is a flat card (see Figures) and the pad extends from one corner at one end of the lower edge to an adjacent corner at an opposite end of the lower edge (see Figures 1-2). The card is also rectangular (see Figures).

6. Claims 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Nicholson, USPN 5,138,738.

Nicholson discloses the claimed invention including a flat card (22) having a handle portion (21) and a lower edge (see Figure 1), an absorbent pad (23) disposed at the lower edge (see Figure 1, hatched line where lower edge and pad meet), the absorbent pad extending from one corner at one end of the lower edge to an adjacent corner at an opposite end of the lower edge (see Figure 1). The flat card is rectangular (see Figure 1.)

7. Claims 1-6, 8-9, and 15-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Valente, USPN 4,575,891.

Valente discloses the claimed invention including a rigid body (3) having a handle portion (4) and a lower edge (underside of "3"), and an absorbent pad disposed at the lower edge of the rigid body (2), the pad being pre-moistened with sanitizing fluid (Column 2 Lines 44-57). The rigid body is a flat card (see Figures), the rigid card is rectangular and the lower edge extends from one corner to an adjacent corner (see Figures). The pad may be a fabric or sponge-like material (Column 2 Lines 38-41). The

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sanitizing fluid is antibacterial, antiviral, and fast-drying (Column 2 Lines 44-57). The pad is fixed to the rigid body by an adhesive or laminated (Column 3 Lines 5-11).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
8. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Owens et al., USPN 5,159,735 in view of Applicant's Specification.

Owens et al. disclose a device for cleaning seats that is pre-moistened with sanitizing fluid that is fast-drying, disinfecting, anti-bacterial, anti-viral, or anti-fungal. Owens et al. does not disclose that the sanitizing fluid is particularly "scented."

Applicant's specification on Page 8 Lines 1-2 states that there are many suitable disinfectants are commercially available that have at least some of these properties (including scented).

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It would have been obvious for one of ordinary skill in the art to modify the fluid of Owens et al. to be also scented since the Applicant states that there are fluids having disinfectants that are commercially available having scents.

9. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ashe et al., US 2004/0156668 in view of Finnerty, USPN 3,821,829.

Ashe et al. disclose all elements above including that the card is made from a plastic (Paragraph 18), however does not disclose that the card is rectangular in shape or is made specifically a thermoplastic.

Finnerty discloses a device having a flat *rectangular* card, the card being rectangular so as to accommodate indicia such as advertising or instructions for use (Column 2 Lines 17-21).

It would have been obvious for one of ordinary skill in the art to modify the card of Ashe et al. to be rectangular, as Finnerty teaches, in order to be of a suitable shape to accommodate certain indicia, and it would have been obvious for one of ordinary skill in the art at the time the invention was made to have the plastic card of Ashe et al. be comprised of thermoplastic since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious engineering choice. In re Leshin, 125 USPQ 416.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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USPN 6,761,177 discloses a swab that is impregnated with solution and has its tips sealed of impermeable material.

USPN 5,630,242 (particularly Figure 6B) shows a swab that is used with a toilet brush handle and this swab is impregnated with dry disinfectants and deodorants.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Cole whose telephone number is (571) 272-1272. The examiner can normally be reached on Monday-Thursday, 7:30am - 5pm, alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Kim can be reached on (571) 272-1142. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LCC

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27 June 2005



MARK SPISICH
PRIMARY EXAMINER
GROUP 3400

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